

AMENDED IN SENATE MARCH 30, 2011

AMENDED IN SENATE FEBRUARY 1, 2011

SENATE BILL

No. 26

Introduced by Senator Padilla

(Coauthors: Senators Anderson, Calderon, Fuller, Harman, and Walters)

December 6, 2010

An act to add Section 4576 to the Penal Code, relating to prisons.

LEGISLATIVE COUNSEL'S DIGEST

SB 26, as amended, Padilla. Prisons: wireless communication devices.

Existing law prohibits unauthorized communication with inmates in state prison. A person who violates that provision is guilty of a misdemeanor. Existing law further prohibits a person in a local correctional facility from possessing a wireless communication device, except as specified.

This bill would provide, with exceptions, that a person who possesses with the intent to deliver, or delivers, to an inmate or ward in the custody of the department any cellular telephone or other wireless communication device or any component thereof, including, but not limited to, a subscriber identity module or memory storage device, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding 6 months, a fine not to exceed \$5,000 for each device, or both that fine and imprisonment.

This bill would provide that if ~~any nonemployee~~ a person who is visiting an inmate or ward under the jurisdiction of the Department of Corrections and Rehabilitation; is found to be in possession of a *cellular telephone*, wireless communication device, ~~as defined~~, or any component thereof, upon being searched or subjected to a metal detector, that device

is subject to confiscation *and would be returned the same day*, except as specified. The bill would require that a notice to that effect be posted in each area where visitors are searched prior to visiting with an inmate or ward.

~~The bill would require, subject to certain exceptions, that any nonemployee who possesses with the intent to deliver, or delivers, to an inmate or ward, a wireless communication device is guilty of a misdemeanor, punishable by a fine not to exceed \$5,000. A subsequent violation of that provision, or the possession with intent to deliver, or delivery of, 2 or more wireless communication devices to an inmate or ward, would be a misdemeanor punishable by 6 months in jail, and a fine not to exceed \$5,000 for each device.~~

~~The bill would also provide that an employee who possesses with intent to deliver, or delivers, one or more wireless communication devices is guilty of a misdemeanor punishable by a fine not to exceed \$5,000 for each device. For purposes of these provisions, an employee is defined to include a volunteer, as specified.~~

Existing law provides for the accumulation, denial, or loss of time credits for inmates of the Department of Corrections and Rehabilitation *department* based on each inmate's behavior while under the jurisdiction of the department.

The bill would also provide that an inmate or ward who is found to be in possession of a wireless communication device would be subject to the denial of time credits, as specified. ~~In addition, the bill would provide that, if an inmate or ward uses a wireless communication device in the commission or attempted commission of a crime, upon conviction of that crime, he or she would be punished, in addition and consecutive to the prescribed punishment, with imprisonment in the state prison for 2, 3, or 5 years.~~

Because the bill would create *a new-crimes crime*, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 4576 is added to the Penal Code, to read:*

2 4576. (a) *Except as otherwise authorized by law, or when*
3 *authorized by either the person in charge of the prison or other*
4 *institution under the jurisdiction of the Department of Corrections*
5 *and Rehabilitation or an officer of the institution empowered to*
6 *give that authorization, a person who possesses with the intent to*
7 *deliver, or delivers, to an inmate or ward in the custody of the*
8 *department any cellular telephone or other wireless communication*
9 *device or any component thereof, including, but not limited to, a*
10 *subscriber identity module (SIM card) or memory storage device,*
11 *is guilty of a misdemeanor, punishable by imprisonment in the*
12 *county jail not exceeding six months, a fine not to exceed five*
13 *thousand dollars (\$5,000) for each device, or both that fine and*
14 *imprisonment.*

15 (b) (1) *If a person visiting an inmate or ward in the custody of*
16 *the department, upon being searched or subjected to a metal*
17 *detector, is found to be in possession of a cellular telephone or*
18 *other wireless communication device or any component thereof,*
19 *including, but not limited to, a SIM card or memory storage device,*
20 *that device or component shall be subject to confiscation but shall*
21 *be returned on the same day the person visits the inmate or ward,*
22 *unless the cellular telephone or other wireless communication*
23 *device or any component thereof is held as evidence in a case*
24 *where the person is cited for a violation of subdivision (a).*

25 (2) *If, upon investigation, it is determined that no prosecution*
26 *will take place, the cellular telephone or other wireless*
27 *communication device or any component thereof shall be returned*
28 *to the owner at the owner's expense.*

29 (3) *Notice of this provision shall be posted in all areas where*
30 *visitors are searched prior to visitation with an inmate or ward in*
31 *the custody of the department.*

32 (c) *Any inmate or ward who is found to be in possession of a*
33 *wireless communication device shall be subject to time credit*
34 *denial or loss pursuant to paragraph (2) of subdivision (a) of*
35 *Section 2932. Notwithstanding Section 2933, credits forfeited*
36 *pursuant to this section shall not be eligible for restoration.*

37 ~~**SECTION 1.** Section 4576 is added to the Penal Code, to read:~~

1 ~~4576. (a) For purposes of this section, the following definitions~~
2 ~~shall apply:~~

3 ~~(1) “Wireless communication device” means any hand-held~~
4 ~~device having the ability to receive or transmit voice, text, or data~~
5 ~~messages without a cable connection, such as a cellular telephone,~~
6 ~~digital wireless telephone, radiotelephone/walkie-talkie, telephone~~
7 ~~pager, personal digital assistant with wireless communications~~
8 ~~capabilities (PDA), or research in motion wireless device (RIM),~~
9 ~~or any component thereof, including, but not limited to, a~~
10 ~~subscriber identity module (SIM) card or memory storage device.~~

11 ~~(2) “Employee” means any departmental staff, contractor,~~
12 ~~subcontractor, volunteer, agent of, or person working for, the~~
13 ~~Department of Corrections and Rehabilitation or working in any~~
14 ~~facility or location where inmates or wards are housed.~~

15 ~~(3) “Volunteer” means any person working, without financial~~
16 ~~compensation, for the Department of Corrections and Rehabilitation~~
17 ~~or in any facility or location where inmates or wards are housed.~~

18 ~~(4) “Nonemployee” means any person who does not meet the~~
19 ~~definition of “employee” in paragraph (2).~~

20 ~~(b) (1) Except as otherwise authorized by law, or when~~
21 ~~authorized by the person in charge of the prison or other facility~~
22 ~~under the jurisdiction of the Department of Corrections and~~
23 ~~Rehabilitation, if any nonemployee visiting an inmate or ward~~
24 ~~under the jurisdiction of the department is found to be in possession~~
25 ~~of a wireless communication device upon being searched or~~
26 ~~subjected to a metal detector, that device shall be subject to~~
27 ~~confiscation.~~

28 ~~(2) Except as otherwise authorized by law, or when authorized~~
29 ~~by the person in charge of the prison or other facility under the~~
30 ~~jurisdiction of the Department of Corrections and Rehabilitation,~~
31 ~~any nonemployee who possesses with the intent to deliver, or~~
32 ~~delivers, to an inmate or ward under the jurisdiction of the~~
33 ~~department a wireless communication device, is guilty of a~~
34 ~~misdemeanor, punishable by a fine not to exceed five thousand~~
35 ~~dollars (\$5,000).~~

36 ~~(3) Any nonemployee who was previously convicted of a~~
37 ~~violation of paragraph (2), who possesses with the intent to deliver,~~
38 ~~or delivers, to an inmate or ward under the jurisdiction of the~~
39 ~~department, one or more wireless communication devices, or any~~
40 ~~nonemployee who possesses with the intent to deliver, or delivers,~~

1 to an inmate or ward under the jurisdiction of the department, two
2 or more wireless communication devices, is guilty of a
3 misdemeanor, punishable by six months in jail, and a fine not to
4 exceed five thousand dollars (\$5,000) for each device.

5 (e) Except as otherwise authorized by law, or when authorized
6 by the person in charge of the prison or other facility under the
7 jurisdiction of the Department of Corrections and Rehabilitation,
8 any employee who possesses with the intent to deliver, or delivers,
9 to an inmate or ward under the jurisdiction of the department, one
10 or more wireless communication devices, is guilty of a
11 misdemeanor, punishable by a fine not to exceed five thousand
12 dollars (\$5,000) for each device.

13 (d) (1) Any inmate or ward who is found to be in possession
14 of a wireless communication device shall be subject to time credit
15 denial or loss pursuant to paragraph (2) of subdivision (a) of
16 Section 2932. Notwithstanding Section 2933, credits forfeited
17 pursuant to this section shall not be eligible for restoration.

18 (2) Any inmate or ward under the jurisdiction of the Department
19 of Corrections and Rehabilitation who, during the commission or
20 attempted commission of a crime, uses a wireless communication
21 device, shall, upon conviction of that crime, in addition and
22 consecutive to the punishment prescribed for the crime of which
23 he or she has been convicted, be punished by imprisonment in the
24 state prison for two, three, or five years.

25 (e) Notice regarding paragraph (1) of subdivision (b) shall be
26 posted in each area in which visitors are searched prior to visiting
27 with an inmate or ward under the jurisdiction of the department.

28 SEC. 2. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.